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Guilty of Getting A Passport Despite the State Department

The Real Crime Committed by Dr. Otto Nathan

The conviction of Einstein's executor, Dr. Otto Nathan, for contempt of the House Un-American Activities Committee must be seen in perspective to appreciate its fine flavor of bureaucratic vindictiveness. By this conviction the State Department has found a way to punish Dr. Nathan for his temerity in challenging its passport procedures in the courts. Its ally, that unhappy xenophobiac, Congressman Walter, has found a way to take out on Dr. Nathan his disappointment that he could not even get his passport control bill out of committee last year.

The scene in court called for a Kafka. The shiny newness of that cavernous, almost empty chamber gave it an air of mechanical unreality, as if it were a huge judicial jukebox. Most of the time there were only three spectators, two friends of Dr. Nathan's from New York and an elderly retired local lawyer who follows civil liberties cases with an ancient but undiminished passion. There was one reporter. The Judge, Curran, gray and white-faced, was constantly picking his nose. The one witness, Richard Ahrens, staff director of the House Committee, fresh from a triumphant appearance before the D.A.R. in national conclave here the week before, read the transcript of Dr. Nathan's appearance into the record, a long droning performance. For the prosecutor, William Hitz, Jr., as for the Judge, this was the umteenth performance of a familiar script, ending in a foregone conclusion. Did the witness refuse to answer the question? If he did, he was guilty of contempt. Next case. . . .

"And Other Similar Information"

But it is hard to believe that on appeal the higher courts will not take cognizance of the background which made Dr. Nathan's appearance before the House Committee what his chief defense counsel, Leonard Boudin, termed a "punitive expedition." If the State Department felt there was good reason for denying Dr. Nathan a new passport when his old one expired in 1952, it was its duty to hold that "quasi-judicial hearing" the Court of Appeals ordered after two and a half years of litigation. It did not hold a hearing. It did not appeal. It gave Dr. Nathan a passport. The reason it evaded a test was clear from the vague web of association and aspersion the prosecutor tried to weave about Dr. Nathan in his opening remarks at the contempt trial. While the Department did not "actually" have information that Dr. Nathan was a Communist, Mr. Hitz said, he had been "consorting with Communists and others"; he had worked in the Treasury * under Harry D. White "named by Elizabeth Bentley," etc.; he at times associated with Mr. and Mrs. Charles Recht, attorney for Amtorg . . . "and other similar information."

They Tried to Get A Bill Instead

Allegations of this kind, spread upon the record, would have cast an unfavorable light on State Department procedures. The Department turned instead to Congressman Walter for new legislation to give statutory basis to the denial of passports on "guilt by association" standards and to validate the withholding of such "evidence" from the accused. Mr. Walter introduced a bill, HR 9991, for that dual purpose. It was given two days of hearings last May before a subcommittee of House Judiciary. Mr. Walter is chairman of this subcommittee and took advantage of the hearings to make slanderous remarks about Dr. Nathan and about the judges who had ruled in his favor. But both the American Bar Association and the Association of Immigration and Nationality Lawyers opposed the bill as unfair and unconstitutional. Chairman Walter could not get it out of committee. He thereupon held hearings in the friendlier atmosphere of his House Un-American Activities Committee where he put into the public pillory a series of witnesses who had defied the State Department, among them Dr. Nathan and Arthur Miller.

What the courts will have to decide on appeal is whether the fresh inning Chairman Walter gave himself in consolation before the Un-American committee represented a real legislative purpose or a vindictive effort to smear opponents of State Department passport policy. They must also decide whether the three contempt counts against Dr. Nathan were not frivolous. He was convicted of refusing to say on First Amendment grounds whether he was a Communist, but the Committee had just read into the record the non-Communist affidavit the State Department had required him to sign with his application for a passport. He was convicted of refusing to answer the question of whether that was an honest affidavit, but his indignant denial that he had ever made a false statement in his life was answer enough. He was also convicted of refusing to say whether he knew Mary Price, an obscure past victim of Committee smears. Just why Mary Price was dragged in, appears nowhere in the record, and he was never specifically directed to answer the question.

Like Einstein, Dr. Nathan feels that the witch hunt can only be fought by refusing to submit to ideological interrogation. He declined on First Amendment grounds to answer questions he could safely have answered. He sought by this means to make his contribution to the preservation of free traditions in his adopted country. And for this we honor him.

* In a long and distinguished career as an economist in this country and in Germany, Dr. Nathan was also economic adviser to Herbert Hoover's Emergency Committee on Employment in 1930-31.

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The Witkovich Case: The First Unfavorable Ruling Against the Internal Security Act

One of Cvetic's Victims Wins A 1st Amendment Victory in the Supreme Court

One of Matthew Cvetic's victims won a victory for himself and the First Amendment in the U.S. Supreme Court last week. He is George I. Witkovich, a printer, of Yugoslav origin, now of Chicago but formerly of Pittsburgh. Cvetic named him as a Communist.

Witkovich, whose family had befriended Cvetic, was railroaded through deportation proceedings on that sick-minded informer's word. Without counsel, afraid to deny Communist membership under oath though he claims he was never a member, Witkovich was ordered deported in June, 1953. He is a man in his early fifties, has lived in this country for forty years, and has an American born wife and four American children, two of them sons who served in the Army.

Inquisition Unlimited

When Yugoslavia refused to take Witkovich back, he was placed under supervisory parole. A provision of the Internal Security Act of 1950 later embodied in the McCarran-Walter Act provides that a deportable alien shall be required to appear from time to time before an immigration officer and "give information under oath as to his nationality, circumstances, habits, associations and activities and other such information, whether or not related to the foregoing, as the Attorney General may deem fit and proper."

As the samples in a box on this page show, the questions an alien may be required to answer under this provision range from what papers he reads to what movies he sees and may also include (as they did in this case) requests for information about other persons suspected of radical activities. In Witkovich's case, questions were asked seeking to link him with "listed" Yugoslav language papers, though the particular paper for which he works as a printer is not Leftist.

Such questions have forced other deportable aliens to plead the Fifth amendment or virtually to become informers for the Justice Department. Witkovich had the nerve to refuse to answer on the ground that such questions invaded First Amendment rights and Pearl M. Hart, Chicago's noted defender of alien and civil liberties cases, took the matter to court when he was indicted.

The District Court Ruled Against the Government

Federal Judge Philip L. Sullivan in Chicago dismissed the indictment, holding that the only questions the Attorney General could properly ask a deportable alien were "to make sure he is available for deportation." The Judge ruled that "very serious constitutional questions" would arise if the statute was read as if it intended "to give an official the unlimited right to subject a man to criminal penalities for failure to answer absolutely any question the official may decide to ask."

The government appealed to the Supreme Court, relying heavily on *Carlson v. Landon* (343 U.S. 988). This was one of the worst anti-alien decisions ever handed down by the Court. Just five years ago in March, the Court ruled 5-4 that under a provision of the Internal Security Act of 1950, the Attorney General could deny bail to persons arrested for deportation on the charge of past or present membership in the Communist party.

They Even Wanted to Know What Movies He Saw

In the Witkovich case, the alien was indicted for refusing to answer questions put to him by the Immigration and Naturalization service. Here are some of the questions:

"Do you subscribe to the Daily Worker?

"Have you distributed petitions or leaflets published by the Slovene National Benefit Society seeking aid for you, in your behalf, in your deportation case since the order for deportation was entered June 25, 1953?

"Since the order of deportation was entered against you have you attended any meetings or socials at the Chopin Cultural Center, 1547 North Leavitt Street, Chicago?

"Have you attended any movies since your order of supervision was entered at the Cinema Annex, 3210 W. Madison St., Chicago?"

The dissenting minority at the time—Black, Douglas, Frankfurter and Burton—protested that this was an invasion of the right to reasonable bail guaranteed by the Eighth amendment. The government in this *Witkovich* case argued that if the danger from aliens suspected of communism was great enough to warrant denial of bail while they were being held for deportation proceedings, it also justified some invasion of First amendment rights in keeping a deportable alien under political surveillance.

A New Court and A New Majority

The result of the appeal shows how the climate of opinion on the Court has changed. The majority five years ago was made up of Reed, Vinson, Jackson, Clark and Minton. Of these only Clark is left on the bench.

In the *Witkovich* case, Mr. Justice Frankfurter upheld the District Court with the support of Black, Douglas, Warren, Harlan and Brennan. Clark dissented with Burton. The latest appointee, Whittaker, did not take part since he was not yet on the bench when the *Witkovich* case was argued. This time the Court split 6-2 in favor of an alien's rights, sharply restricting the political surveillance the Attorney General can exercise over deportable aliens on supervisory parole.

This is the first decision to deal unfavorably with a provision of the Internal Security Act of 1950. Here again we find the Eisenhower appointees—Warren, Harlan and Brennan—lined up with the New Dealers against the last two Truman judges on the bench.

The effect of the majority decision has a wider significance. The reasoning of the Clark dissent could be extended to citizens. "We believe," Mr. Justice Clark protested, in genuine Truman era cold war accents, "that the counterbalancing necessity of preventing further detrimental conduct . . . substantially outweighs 'issues touching liberties' which might be raised by the interrogation."

This was the kind of "balancing" which, beginning with the loyalty purge when Clark was Attorney General, soon began to balance *out* many traditional liberties for aliens and citizens alike. The hostility of the court to that kind of reasoning, and the new lineup, are hopeful.

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The Anti-Trust Story Behind That Pre-Merger Notification Bill

Congress Builds A Weak Dam Against the Flood of Mergers

By A Business Observer

At a time when the President and many Congressmen express alarm at the rapid growth of mergers in this country and talk worriedly of "creeping monopoly," it is disturbing to realize that the actual situation may be worse than they know.

Attorney General Brownell has said the Justice Department may miss about 30 per cent of the current mergers. But that is what Senator Taft would have called "an informed guess." The information on which it is based is so scanty it is probably an understatement.

The task of enforcing our antitrust laws is lodged in the Department of Justice and the Federal Trade Commission. But when it comes to determining what mergers violate the Clayton Antitrust Act by substantially lessening competition or tending to create a monopoly, both agencies face a serious stumbling block. To learn what mergers are taking place they must rely —as any ordinary citizen does—pretty much on what they can find by reading the financial papers and manuals.

They Learn Too Late

The government agencies that regulate airlines, railroads, shipping and power companies have good information about their industries since any mergers in these fields must have their advance approval. But Justice and FTC, with a vaster share of the economy to supervise, have no such resources. What is worse, the information they finally do glean often reaches them too late, after the merger is accomplished. Their common cry is echoed on the Hill: "You can't unscramble an omelet."

To remedy the situation, both House and Senate this term, at last, are considering pre-merger notification bills. The law they may pass would amend the Clayton Act to require all corporations with combined assets of $10 million or more to notify FTC and Justice in advance of a merger. They would also be required to provide relevant financial information and to wait 60 days or so while the government studied the transaction for possible monopolistic effect.

Prospects for the bill are good. A similar one was almost passed last term. This year, the House Subcommittee on Antitrust has already approved it. Hearings on comparable Senate bills may start next month.

Banks Were Dropped

Unquestionably such a law will improve the quality of antimerger work. But is it enough? The bill is open to criticism in two respects. For one thing regulation of bank mergers consummated by an acquisition of assets has been dropped from the House bill. It is probable, an aide says, that the Senate bills will be similarly amended. That would leave regulation of banks where it is now: in the hands of the Federal Reserve Board, the Federal Deposit Insurance Corp. and the Comptroller of the Currency Ray M. Gidney. Banks like it that way because all three have shown sympathy for their problems. Mr. Gidney's sympathy is such that according to Representative Celler he has never disapproved a merger.

Hit or Miss Enforcement

The other question about the law is to what extent will the economic information it requires be sufficient? Important as it is for the government to have relevant data about a particular merger, it is equally important to have information about the industry in which the two merging companies operate. It is necessary to know, for instance, what their share of the market is and what products they and their competitors make before an intelligent estimate can be made of how a merger will affect competition. At the present time such information is sketchy and results in hit-or-miss enforcement of existing anti-merger law.

But if the present bills make no provision for systematic economic reporting they may not need to. There is reason to believe that FTC already has sufficient authority to set up such a reporting program. The fact that it has never done so raises another doubt about the efficacy of the new law: how strong is the will to enforce it?

Do We Need A Pre-Merger Law?

There are those in the Commission who say a pre-merger notification law was never necessary. They say the same section of the FTC Act that compels companies to submit data for the agencies quarterly financial reports could be used to obtain anything the new law would give them. Early in Eisenhower's first administration there was a plan afoot in FTC to meet the merger wave by using the section to obtain advance notice of mergers. Through design or apathy nothing came of it.

Yet Edward F. Howrey, who was chairman then, professed to be worried about mergers. The high incidence in recent years, he said in a 1955 speech, was "disturbing." But he prudently pointed out it was still "well below the pre-depression rate of the late 20s." Alas for this bit of reassurance. Comparing mergers in terms of numbers tells you little about their economic significance. And anyway, the totals of the 20s have been revised upward in later years. No one yet knows how far off the totals of the 50s are.

Perhaps FTC has temporized. If so, one should recall how under existing laws Congressional prodding in recent years has invigorated the agency's antimerger work. A premerger notification bill, even an imperfect one, might help.

On Mergers, All the Government Knows Is What It Reads in the Papers

MR. PIERCE (Committee counsel): Chairman Gwynne, are there many instances of significant mergers where the Commission is not informed beforehand that the merger will take place?

GWYNNE (Chairman, Federal Trade Commission): Oh yes. We are not fully informed now at all. We just read it in the paper. And there are many mergers, I daresay, we don't know much about until they are pretty well along.

REP. KEATING: The Attorney General testified, as I remember, that there were almost 30 per cent of them they didn't even pick up by scanning the journals.

GWYNNE: I don't know that we have a similar estimate but I'm inclined to think it is something like that.

—Before the House Subcommittee on Antitrust, March 7.

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Another Tip to Editors: Aramco Is Also Under Investigation in Saudi Arabia

Treating the Middle East in 1950 Like Latin America in 1900

Events in the Middle East have a "this is where we came in" flavor. . . . The fleet, the Marines, the use of loans to bolster up shaky dictatorships, are reminescent of Latin American policy from the days of Teddy Roosevelt to those of Herbert Hoover. . . . This is the big stick and dollar diplomacy again. . . . It is amazing to see how easily and quickly the Eisenhower Doctrine was turned into a plain and simple U.S. protectorate, Monroe Doctrine style, over the Middle East, without outcry from Congress or the country. . . .

Moscow's outrage about intervening in the affairs of sovereign states will read sourly in Polish and Hungarian. . . . The same excuses of *Realpolitik* which pro-Communists used to excuse the Russian smashing of the Hungarian revolt are the same excuses offered for American intervention to keep Jordan from falling apart, and letting war break out in a scramble for the pieces. . . .

Unfortunately for world stability, the Eastern Mediterranean is not the Caribbean. . . . The sooner the pacification of the area can be handed over to the United Nations, the better the chances for peace. . . . And the key to peace lies in resettlement of the Arab refugees and an Arab-Israeli settlement. . . .

Open Subways As Well As Skies?

Nothing will come of the Russian half-way offer on Ike's "open skies" plan. . . . That plan was a smart publicity stunt put forward only in the belief that the Russians would never accept it. . . . Only a few days before the new Soviet proposal, former President Truman expressed misgivings about the "open skies" plan and suggested that nothing be done until "we have full and equal inspection on the ground as well as underground." . . . If the Russians ever accepted that, there would be an outcry in this country against letting Russian spies "see our defenses", etc. . . . We're only going through the motions on disarmament because the pressures of the arms race pinch our allies as much as they do the Soviets. . . .

Saudi Arabia Suspicious, Too

Bigger publications, picking up (but without credit) the Aramco revelations in our issues of April 8 and April 15, have sparked an inquiry. The staff of the powerful Congressional Joint Committee on Internal Revenue Taxation has been requested by Senator Byrd to investigate the arrangement by which the oil company in 1950 finally agreed to give Ibn Saud greater revenue but in the form of an income tax, which could be paid off at the expense of the U.S. Treasury. . . .

These same bigger publications do not seem to have noticed that Aramco is also under investigation in Saudi Arabia. The New York *Journal of Commerce* (April 23) revealed that Saudi Arabia was critical of Aramco because the company, in figuring its 50-50 split with Ibn Saud, has been fixing the price of crude at $1.97 a barrel but actually selling it at Sidon, the outlet of the Trans Arabian pipeline, at $2.69 a barrel; the extra 72 cents a barrel is pocketed by Aramco and not shared by Ibn Saud. . . . Saudi Arabia is thinking of establishing its own company, and hoping some day to do its own marketing. . . . Another cloud on the Middle Eastern oil horizon is the 75 percent profit offered Iran by Italy for an oil concession instead of the prevailing 50-50. . . .

The FBI and The Witch Hunt

In a detailed study by a staff writer, the Washington *Sunday Star* (April 28) decided that despite disclaimers so-called confidential FBI material does find its way into Congressional investigating committee files. The *Star's* reporter quoted an ex-FBI man now a committee staff investigator as telling him, "We wouldn't be able to stay in business overnight if it weren't for the Bureau." . . .

In this connection, attention might be called to a "U.S. government executive agency security report" on the late Herbert Norman which Robert Morris read into the record of the Senate Internal Security Committee on March 12. . . . This said that when Tsuru Shigato, a Japanese instructor at Harvard, was picked up for repatriation by the FBI in 1942, Norman approached the FBI to obtain custody of Shigato's belongings. . . . "One main item of these belongings," the report said, "was a complete record of the Nye munitions investigation, largely prepared by Alger Hiss." . . . This wacky attempt to link Norman through Shigato with Hiss is typical. . . .

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